

## Legal Analysis of Agency Agreements under the Principle of *Taisir* in Islamic Contract Law

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### ABSTRACT

This research aims to analyze agency agreements from the perspective of the principle of *taisir* (ease), which is one of the fundamental principles that must be upheld in the implementation of contracts within the framework of Sharia. This research employs a normative legal methodology by utilizing library research for data collection. The approaches adopted in this study are the statutory approach and the conceptual approach. The results of this study indicate that the concept of agency in business relationships is a necessity in the process of distributing goods from producers to consumers. There exists a gap in time, geography, and quantity between producers and consumers, which makes the role of agency increasingly indispensable. The agency concept is equated with the relationship between the principal and the agent under the Civil Code (*KUH Perdata*), and in Islamic contract law, the characteristics of agency can be likened to *wakalah al-muqayadah*. The existence of agency agreements represents an efficient form of economic behavior, which is also aligned with the principle of *taisir* in Islamic contracts, defined as the facilitation of daily economic transactions. On the other hand, this also reflects the flexibility of Islamic law in addressing contemporary issues.

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### Introduction

The rapid development of business activities demands that various supporting aspects keep pace with this growth. From a business perspective, an increase in a company's production capacity must be accompanied by the expansion of its marketing territory beyond the company's established location to maximize profits. To achieve such market expansion, external parties are needed to act as intermediaries for the company in marketing its products. Product marketing is conducted on an ongoing basis in line with the company's continuous operations, which necessitate the sustainable presence of intermediaries (Muhammad, 2021).

The need for intermediaries to market products beyond the company's production area requires the establishment of business relationships with external parties who can represent the company in distributing its products to consumers. Such business relationships can be realized,

among other ways, through agency arrangements. The agency concept offers a solution to the challenges faced by companies, as agents are appointed by the company to represent it in conducting business transactions with consumers based on an agreement binding both parties. Agency relationships can thus be understood as a necessary alternative for companies in managing their business operations.

One of the primary considerations for companies to establish agency relationships is that some companies do not have branches or representatives in certain marketing areas. Establishing a branch in a specific region would require substantial capital, while, in business, efficiency is just as crucial as profitability. Therefore, to minimize excessive expenditures, companies often opt for business relationships in the form of agency arrangements or other alternatives without the need to establish branch offices (Muhammad, 2021).

In practice, agency relationships are inherently tied to agreements, which serve as the benchmark for achieving mutual consent between the parties involved. Agency agreements are not explicitly recognized in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUH Perdata*) or the Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang* or *KUHD*), and thus are categorized as innominate agreements or unnamed contracts. These innominate agreements emerge from practical needs driven by the continuous growth of the business sector, which in turn influences the development of economic law in Indonesia (Moniung, 2015). Nevertheless, agency agreements must still comply with the legal requirements for a valid contract as stipulated in Article 1320 of the Civil Code, which include mutual consent, legal capacity to enter into an agreement, a specific subject matter, and lawful clauses.

In Islamic contracts, an agreement or contract is known as *akad*. The formulation of an *akad* must be based on principles established in Article 21 of the Compilation of Sharia Economic Law (*Kompilasi Hukum Ekonomi Syariah* or *KHES*). One of these principles is the principle of *taisir*, which means ease, and it aims to promote ease and avoid difficulties in *muamalah* activities, including business transactions. The increasingly significant development of the sharia economy in contemporary times has made this principle particularly relevant to the dynamic nature of the business world. Fundamentally, business activities are inherently tied to agreements.

Based on the above background, the topic of agency agreements, which serve as an alternative in product marketing, analyzed through the lens of the principle of *taisir*, becomes an intriguing subject for discussion. However, the author acknowledges that this research topic is not entirely novel. Several previous studies have explored similar themes. First, a study conducted by Gede Agus Wiadnyana et al. in 2021 examined agency agreements from the perspective of the principle of freedom of contract. This study found that the principle of freedom of contract has not been fully realized in agency agreements, as there exists an imbalance of power between the agent and the principal. In practice, the contractual clauses are unilaterally formulated by the principal, leaving the agent with no authority to express their intentions (Wiadnyana et al., 2021).

Another study, conducted by Rosidda Diani and Mahendra Kusuma in 2021, examined agency agreements from the perspective of civil law. This study stated that agency agreements fall under the category of innominate agreements. These agreements share similar characteristics with commission agreements or specific power-of-attorney agreements involving remuneration. In the event of a dispute, the primary reference is the agency agreement itself, and if it is not explicitly regulated, the general provisions of the Indonesian Civil Code (*KUH Perdata*) apply (Diani & Kusuma, 2021). Lastly, a study conducted by Ahmad Syarief et al. in 2019 analyzed the application of the principle of freedom of contract in agency

agreements between PT Pertamina (Persero) and 3 kg of LPG agents. This study found that the agency agreements established by PT Pertamina (Persero) did not exhibit the typical characteristics of agency agreements but rather resembled distribution agreements. For example, agents were required to purchase 3 kg of LPG from PT Pertamina (Persero), and their income was not derived from commissions but rather from the profit margins of LPG sales (Syarieff et al., 2019).

The difference between this study and previous research lies in its focus on analyzing agency agreements through the lens of the *taisir* principle, which is a fundamental aspect of Islamic contracts. Consequently, the research question addressed in this study is what is the legal analysis of agency agreements when examined through the principle of *taisir* in Islamic contracts?

## Research Method

This research is a type of normative legal study that examines law as a norm, rule, legal principle, or guideline to address the issues under investigation (Muhamimin, 2020). The data collection method employed in this study involves library research. The legal materials used consist of primary and secondary legal sources. Primary legal materials include the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUH Perdata*), the Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang* or *KUHD*), Minister of Trade Regulation No. 24 of 2021 on Agreements for the Distribution of Goods by Distributors or Agents, and other regulations relevant to the research topic. Meanwhile, secondary legal materials comprise various literature that explains the primary legal materials and relates to the issues studied. The approaches utilized in this research include the statutory approach, which involves analyzing laws and regulations related to the research topic, and the conceptual approach, which draws on doctrines and principles relevant to the issues examined (Ishaq, 2017).

## The Concept of Agency Agreement

The term "agency" is not recognized in the Continental European legal system, which is based on written law. However, agency is well-known and applied within the Anglo-Saxon legal system. Indonesia, as a country adhering to the Continental European system, recognizes the term *vertegenwoording*, which refers to the granting of power or representation. Therefore, agency within Indonesia's civil law system is grounded in the provisions of power of attorney, as regulated in Articles 1729–1819 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or *KUH Perdata*). Consequently, it can be understood that the legal relationship in agency involves the principal (giver of authority) and the agent (recipient of authority), and to ensure legal certainty, this relationship is formalized through an agreement (Muhammad, 2021).

In addition to being based on the concept of power of attorney under the Civil Code, agency agreements were initially created on the principle of freedom of contract. Over time, however, the existence of agency agreements began to be recognized, marked by the introduction of regulations on agency issued by the government (Sudjana, 2022). The concept of agency is regulated through Law No. 7 of 2014 on Trade, as amended by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. Additionally, Government Regulation No. 29 of 2021 on the Implementation of Trade, which is a follow-up to Law No. 7 of 2014 and Law No. 11 of 2020 as amended by Law No. 6 of 2023, and Minister of Trade Regulation No. 24 of 2021 on Obligations for the Distribution of Goods by Distributors or Agents, further regulate agency practices.

In an agency relationship, there are two parties involved: the principal and the agent. According to Minister of Trade Regulation No. 24 of 2021 on Obligations for the Distribution of Goods by Distributors or Agents, Article 1, Paragraph (3) defines the principal as "an individual or business entity, either a legal or non-legal entity, within or outside the country, that designates a distributor or agent within the country to sell goods produced, owned, or controlled by the principal." Meanwhile, the definition of an agent, as stated in Article 1, Paragraph (6) of the same regulation, refers to a party appointed to act on behalf of the principal and as an intermediary.

Agency agreements in the business world are understood as a relationship between the principal, as the party granting authority, and the agent, as the party receiving authority to act on behalf of the principal in conducting business transactions with third parties (Absar, 2014). The relationship between the agent and the principal is based on mutual dependence, trust, reinforcement, and mutual benefit, resulting in an equal legal standing between the agent and the principal, similar to that between a company and an entrepreneur. An agency relationship differs from an employment relationship in that the former emphasizes mutual benefit and equality of position, whereas the latter, under labor law, entails a hierarchical relationship of employer and employee. Additionally, agents do not receive the same benefits as employees, such as severance pay, wages, and other worker entitlements. Instead, agents receive commissions based on their sales, as determined by the agreement between the principal and the agent (Taqiyya, 2021).

An agent acts on behalf of the principal in distributing its products. Therefore, the agent is granted limited authority in performing its actions, with the principal exerting greater intervention. This distinction sets the agent apart from the distributor, as there is often a lack of understanding in society regarding the differences between the two. According to Minister of Trade Regulation No. 24 of 2021, a distributor is a business entity engaged in distribution and acts on its own behalf, as appointed by the producer or supplier. The legal relationship in a distribution agreement is a sales contract, wherein the distributor purchases products from the producer, thus taking control of the products. As a result, in a distribution agreement, the producer has limited authority over the distribution of the products, and the distributor's profit is derived from the price difference between the purchase price from the producer and the selling price to the consumers. In contrast, in an agency agreement, the agent acts as an intermediary between the consumer and the principal, with the principal retaining ownership of the goods being marketed (Nurhayati, 2011).

An agent is appointed by the principal to perform activities on behalf of the principal and for the principal's benefit. Therefore, the agent is compensated with a commission for their work, as agreed upon in the contract. The goods held by the agent are owned by the principal; however, the agent is granted authority to conduct transactions and negotiate contracts with third parties. It is important to emphasize that the principal will also be bound by the contract and held responsible for the goods involved. Hence, it can be understood that an agency agreement is based on the principle of granting authority by the principal to the agent, with the agent's consent to act under the supervision and control of the principal (Santoso, 2015). Furthermore, a distinctive feature of agency contracts in Indonesia is that agency relationships are applied by similar companies, where both the principal and the agent are independent entities without an ownership relationship, such as a parent-subsidiary relationship (Muhammad, 2021).

The agency relationship is rooted in the doctrine of fiduciary duties, which arises when a person delegates authority to perform specific legal acts for the benefit of the grantor. The agency relationship is based on trust, and this doctrine requires the agent to act in the best

interests of the principal and avoid conflicts of interest unless the principal consents and the agreement is made in writing. If the agent breaches this obligation, it may lead to the nullification of the agency agreement (Muhammad, 2021). Additionally, as the agent acts as the principal's representative, the principal has an obligation to supervise and be accountable for the agent's actions as long as the agent does not exceed their authority. However, if the agent acts beyond the authority granted, the responsibility falls upon the agent, meaning that not all actions of the agent are the responsibility of the principal (Absar, 2014).

The purpose of the agency relationship is to provide convenience for the principal in marketing the goods they produce. Since the agent acts as a representative of the principal, the price of the goods marketed by the agent is determined by the principal. Furthermore, because the principal retains greater authority, the agent does not bear the risk associated with the goods marketed to consumers or third parties. Additionally, the agent has the right to request reimbursement for any expenses incurred in carrying out their duties. On the other hand, the agent is also obligated to act in the best interests of the principal. The agent is prohibited from secretly profiting from the principal (non-secret profit making) and must report their activities to the principal (Sudjana, 2022).

There are several principles to highlight in the agency relationship. When an agent enters into a contract with a third party or consumer, the principal will be bound by the contract, and the agent does not become a party to that contract. This is a consequence of the agent acting as the principal's representative. Furthermore, if there is any risk associated with the goods or services marketed through the agent, the agent cannot be held liable, as ownership of the goods or services rests with the principal. The agent also lacks the authority to appoint a sub-agent to replace them; the decision to appoint a sub-agent is the prerogative of the principal (Santoso, 2015).

### **The Principle of *Taisir* in Islamic Contracts**

The development of Islamic economic practices in Indonesia has been growing rapidly, prompting the government, specifically the Supreme Court, to issue Supreme Court Regulation (*Peraturan Mahkamah Agung* or PERMA) No. 2 of 2008 concerning the Compilation of Islamic Economic Law (*Kompilasi Hukum Ekonomi Syariah* or KHES). KHES serves as a guideline for judges in addressing issues related to Islamic economics. The formation of KHES is a result of the expanded authority of the Religious Courts to resolve cases in the field of Islamic economics through Law No. 3 of 2006 on Amendments to Law No. 7 of 1989 concerning Religious Courts (Sa'diyah et al., 2021).

Islamic economic practices are closely linked to the existence of contracts, which serve as a form of legal certainty for the parties involved in business transactions. Contract provisions are specifically discussed in the second book of the KHES, known as *akad*. *Akad* is an agreement in which the parties mutually bind themselves to a particular act in a matter, with mutual consent and in accordance with Shariah principles (Nurhadi, 2017). Article 21 of KHES outlines the principles that must be met in an *akad*, including *ikhtiyari* (voluntary), *amanah* (trust or fulfillment of promises), *ikhtiyati* (precaution), *luzum* (binding nature), mutual benefit, *taswiyah* (equality), transparency, capability, *taisir* (ease), good faith, and the lawful cause.

The principle of *taisir* is the focus of this study. Article 21, letter (i) of KHES states that an *akad* should be based on the principle of *taisir* or ease. This means that the contract or agreement is made in a way that facilitates the fulfillment of the obligations for each party. Moreover, beyond simply facilitating the process, the agreement should ideally ease the affairs of the people. Islamic teachings promote ease for Muslims, especially in matters of *muamalah*

(transactions), and actions that create hardship should be removed to promote the greater welfare of the community (Effendi, 2020).

One of the hadiths narrated by Bukhari and Muslim states, (Indeed, religion is ease, not hardship). According to Izzudin bin Abd al-Salam, as cited in the book "Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis" he asserts that the entire Shariah is essentially about public benefit, whether it leads to goodness (*maslahah*) or prevents harm (*mafsadah*). Therefore, according to Shariah, all elements that promote *maslahah* are commanded to be implemented, while those that involve *mafsadah* should be eliminated (Djazuli, 2017).

Public benefit (*maslahah*) should lead to ease, not difficulty. Several conditions for *maslahah* have been outlined by scholars, including the following:

- a. *Maslahah* must align with the *maqasid al-shariah* (objectives of Shariah);
- b. *Maslahah* should not cause uncertainty in bringing about benefit or removing hardship;
- c. *Maslahah* should lead to ease and be applicable, rather than causing difficulty;
- d. *Maslahah* should benefit not just a small segment of society, but the larger community as a whole (Djazuli, 2017).

Islamic jurisprudence scholars define the principle of *taisir* as making things easy and feasible to implement (Iswandi, 2014). This means that using easier methods is preferred over more difficult ones. This principle emphasizes ease to promote public benefit in *muamalah* (transactions), as difficulty leads to hardship and burdens those who engage in it. The principle of *taisir* correlates with the Islamic legal maxim that states: *الضرر يزال* (harm must be removed). The Islamic legal maxim aims to achieve *maqasid shariah* by eliminating hardship or at least alleviating it. Therefore, this maxim can serve as a foundation for its application in broader *muamalah* practices (Djazuli, 2017). These principles, which form the foundation of *taisir*, can be used as a guide for Muslims to obtain ease in daily life, including in business activities (Hardi, 2018).

### Agency Agreements Reviewed under the Principle of *Taisir*

In principle, Islam allows its followers to engage in *muamalah* (transactions) as long as there is no evidence prohibiting it. There is an Islamic legal maxim that has long been used as the basis for this argument, namely:

الأصل في المعاملة الإباحة إلا أن يدل دليلاً على تحريمه

This means, "The default ruling in all forms of *muamalah* is permissibility, unless there is evidence that prohibits it" (Djazuli, 2017). From this Islamic legal maxim, it can be understood that engaging in *muamalah* activities, in this case business activities involving agency relationships, is permissible if there is no evidence prohibiting it (Mansyur, 2020).

From the perspective of Islamic contract law, an agency agreement can be categorized as a *wakalah* contract. The Fatwa of the National Shariah Council - Indonesian Ulema Council (DSN-MUI) No. 126/DSN-MUI/VII/2019 states that a *wakalah* contract is a contract in which the principal (the one granting the power) gives authority to the agent (the one receiving the power) to perform a specific legal act. The use of a *wakalah* contract is applied by someone who is unable to carry out an action, thereby requiring another party to perform that action on their behalf (Laily, 2022). The agency agreement can thus be categorized under the concept of a *wakalah* contract, where the presence of the agent is necessary for the company to act as an intermediary in marketing its products, allowing the company to be represented by the agent.

The emergence of agency agreements is a response to the need for intermediaries in the marketing of goods or services for the principal, typically a company that produces goods. These intermediaries are needed due to the gap between producers and consumers. The gaps include first, geographical gaps, which arise because of the difference in location between production centers and the locations of end consumers, as a product may have consumers dispersed across various regions. Second, temporal gaps occur, as production by a company is continuous, while consumer purchases occur only at certain times. Third, quantitative gaps, as the quantity of products produced by the manufacturer may differ from the needs and demands of the market (Diani & Kusuma, 2021).

The *wakalah* contract in Islamic contract law has several types, namely: first, *wakalah al-mutlaqah*, which refers to representation for all matters; second, *wakalah al-muqayyadah*, meaning representation for specific matters; and third, *wakalah al-ammah*, which is a broader form of representation than *al-muqayyadah* but simpler than *al-mutlaqah* (Rizal, 2022). Based on these types of *wakalah*, an agency agreement can be categorized as *wakalah al-muqayyadah*. This is because the agent represents the company only in matters related to the marketing of goods or services within a specific region, and the agent has limited authority over the marketing of these goods or services.

According to the Fatwa of DSN MUI No. 10/DSN-MUI/IV/2000, *wakalah* is binding on both parties with the presence of compensation, meaning that such an agreement cannot be unilaterally canceled. Similarly, in an agency agreement, the agent receives a commission from the principal for the sale of goods or services they carry out, and thus, the agency agreement also cannot be canceled unilaterally.

The existence of an agency relationship, formalized through a written agreement, ultimately provides convenience for the parties involved. The principal, who is interested in marketing goods or services, benefits from the presence of an agent who can reach consumers and promote their products. The agent also benefits from this agency arrangement by earning a commission for the tasks performed in marketing the principal's products. Additionally, consumers benefit by having easier access to the goods or services they need. With the agent's presence, consumers can obtain the products without needing to go directly through the principal, which is particularly advantageous when production facilities are located far from the consumers.

The agency relationship represents a form of cooperation that can be a viable option for companies looking to simplify and support the development of their business in the marketing sector. When a company increases production and aims to maximize economic profits, expanding the market is essential. Market expansion often involves regions that are geographically distant from the company. Therefore, it becomes important for the company to have branches or representatives in various markets. Opening branches involves significant costs, which companies usually consider in terms of efficiency and the risks associated with high expenditures. To mitigate these concerns, companies can opt for a collaboration in the form of an agency, which carries lower risks (Muhammad, 2021).

As explained above, the concept of agency can be considered a form of convenience and a solution for companies to avoid excessive expenditure risks. Thus, the presence of an agency agreement aligns with the principle of *taisir*, which seeks to eliminate difficulties and bring about benefits, and is in harmony with the Islamic legal maxim *الضرر بغيره* meaning harm must be removed. The harm here relates to the gap between the principal and the consumer in terms of marketing goods, as well as the high risks borne by the company if it must open branches to handle marketing. The difficulties are addressed through cooperation in the form of an agency agreement.

The benefits should be felt widely by society. In the context of applying the principle of convenience in agency agreements, the benefits extend to all parties involved: the principal, the agent, and the consumer. This business relationship reflects the spirit of the principle of convenience known in Islamic contracts. The principle of convenience is highly relevant in addressing challenges in the economic world, demonstrating the flexibility of Islamic law in responding to contemporary issues (Iswandi, 2014). Furthermore, this principle of *taisir* also counters the perception that Islamic law is rigid and difficult to apply. Instead, it shows that Islamic law encourages ease and rejects matters that cause difficulty (Agustianto, 2015).

## Conclusion

Agency under Islamic contract law can be categorized as *akad wakalah* or a power-of-attorney agreement, where one party grants authority to another. This type of agreement is employed when the grantor is unable to carry out an action and requires someone else to do so. The agency agreement, in accordance with the principle of *taisir*, is used to provide an alternative for producers who are unable to market their products and need another party to take on this role. Thus, the agency agreement provides ease for producers and, of course, profit for the intermediaries appointed by them. The principle of *taisir* seeks ease in transactions, and in this context, the agency agreement aligns with the objective of *taisir*, bringing benefit to all parties involved.

## Author Contribution

AM served as the principal author and was responsible for developing the research concept, conducting data collection, and drafting the main manuscript. ANP contributed by composing the literature review and research methodology sections, as well as assisting in the revision and refinement of the manuscript.

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